

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

JOHN F. KNIGHT, JR., and
ALEASE S. SIMS, et al.,
individually and on behalf of
others similarly situated,

Plaintiffs and Plaintiffs-
Intervenors,
**UNITED STATES OF
AMERICA,**

Plaintiff-Intervenor,

v.

THE STATE OF ALABAMA, et
al.,
Defendants.

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Civil Action No.
2:83-cv-1676-HLM

**SETTLEMENT AGREEMENT
BETWEEN THE KNIGHT-SIMS PLAINTIFFS AND
DEFENDANT UNIVERSITY OF NORTH ALABAMA**

**I.
Purpose and Basis of the Agreement**

This Agreement is entered into by John F. Knight, Jr., and

Alease S. Sims et al., on behalf of themselves and the plaintiff class they have been certified to represent, and by defendant University of North Alabama(hereafter “defendant University,” “defendant,” or “the University”). The purpose of this Agreement is to specify the terms on which the Knight-Sims plaintiffs will join defendant University in requesting that the Court enter a judgment finally dismissing the claims against defendant University in this action.

Defendant University acknowledges that since the Court’s July 12, 1985, entry of the Consent Decree to which the Defendant University was a party, it has been required to implement certain actions consistent with the objectives of the Fourteenth Amendment and Title VI. Defendant University further acknowledges that since the entry of the Court’s 1991 Remedial Decree, all defendants have been enjoined from maintaining vestiges of *de jure* segregation and from engaging in practices which have the effect of impeding the desegregation of the state’s

institutions of higher education. Since the Consent Decree was entered into by the Defendant University in 1985, substantial progress in conditions, policies and practices at defendant University has been achieved. The parties agree that this progress should continue. The parties further agree that continued progress does not depend on continued federal court supervision. It is in this spirit that the parties have reached this Settlement Agreement. ("Agreement").

Applicable desegregation law requires the Court to determine that vestiges of segregation have been eliminated to the extent practicable and consistent with sound educational practices. By entering into this Agreement, the Knight-Sims plaintiffs acknowledge that defendant University has satisfied this legal burden. Similarly, by entering into this Agreement, defendant University pledges to continue the substantial progress toward greater diversity in student, faculty, staff and administrative populations of the University community that has been achieved

over the course of this litigation and toward redressing historical discrimination in higher education against African-American citizens of this state. To that end, this Agreement's primary focus is on continuing to improve African American participation in Alabama's system of public higher education. Without limiting its agreement to continue this progress, defendant University agrees to take the following specific steps.

II.

Specific Obligations of Defendant

1. Defendant University agrees that it will develop and implement a Strategic Diversity Plan as an integral component of its overall university strategic plan. The timing of the development of the Strategic Diversity Plan shall be coordinated with the development of the overall university strategic plan.

Implementation of the Strategic Diversity Plan shall begin no later than the date upon which University's overall strategic plan is adopted by its Board of Trustees, a date which shall occur not

later than December 31, 2008.

2. Defendant University will develop and tailor its Strategic Diversity Plan to its own institutional circumstances, utilizing best practices that are being developed nationally and complying with the relevant legal and constitutional guidelines. However, at a minimum, defendant University agrees as follows:

a. Defendant University will include in its strategic planning processes the Advisor to the President for Minority Affairs, the Minority Student Advisor, the Equal Opportunity Officer, or persons exercising the functions of such positions. Said participants may designate a substitute faculty or staff member or student representative in the event of conflict or incapacity. African-American faculty and staff at defendant University shall be permitted to designate representatives to participate in the development of the Strategic Diversity Plan.

The objective will be to make the Strategic Diversity Plan the product of inclusion and consensus. The parties acknowledge

that the Plan should address under-represented elements of the community, not just African Americans. Nevertheless, in Alabama, where the history and effects of segregation are well known, diversity efforts will of necessity focus upon increasing African-American representation on faculty, staff and “Administrative” level positions.

b. The Strategic Diversity Plan will include the development of goals and timetables for achieving a critical mass of African-American representation on the faculty, staff and in “Administrative” level positions over the course of the five-year planning horizon, not as legally or contractually enforceable quotas but as standard management techniques for determining the plan’s effectiveness. The University shall periodically review and modify these goals and timetables in light of experience with implementation of the Plan and changing circumstances, with the overall goal of increasing diversity throughout the University community.

c. The President and all deans and department heads will be held administratively accountable by the University for, and their job performance shall be evaluated, at least in part, on the basis of progress toward achievement of the overall university strategic plan, including the Strategic Diversity Plan.

d. The Strategic Diversity Plan will provide for at least one and, if practicable, two African-American representatives on all search committees for presidents, "Administrative" level positions and, to the extent practicable, on all search committees for faculty.

e. The Strategic Diversity Plan shall, to the extent allowed by law, require that diversity be considered in hiring for all faculty, staff and administrative positions.

3. While creation of a new position is not necessarily required, Defendant University agrees to assign oversight of implementation of the Strategic Diversity Plan to a Vice President or other cabinet level administrator.

4. Defendant University agrees that its Strategic Diversity Plan shall be endorsed by its Board of Trustees.

5. Defendant University agrees to attend annual conferences, if held, with other defendant universities to review and critique the development, terms and implementation of their strategic diversity plans and to exchange information about best practices. At least three faculty representatives appointed by the University's Advisor to the President for Minority Affairs, one of whom may include said Advisor, and representatives of the defendant University's African-American faculty and/or any African-American organization that might be organized at the defendant University, shall be allowed to attend and to participate fully in these conferences. Defendant University agrees to post on its web site a report of the conference as delivered to the President by said Advisor, including any minority reports and recommendations of other participants.

6. Defendant University agrees to post to its web site by

February 1, 2007, and by February 1 of each year thereafter a report on the status of faculty, staff and administrative diversity that, at a minimum, includes the following:

- a. Racial composition data of student body (total, undergraduate, and graduate) from 1991 to the present;
- b. Racial composition of the students awarded bachelor, graduate and professional degrees;
- c. Racial composition of full-time faculty from 1991 to the present;
- d. Racial composition of presidents, provosts, vice-presidents, deans, department chairs and other "Administrative" level persons from 1991 to the present;
- e. The number of African Americans considered for these faculty and "Administrative" positions.
- f. An assessment of progress by the institution in enhancing diversity and/or moving toward its diversity goals, with an emphasis on the representation of African-American faculty,

staff and “Administrative” level positions and students.

III.

Dismissal of Action and Settlement Implementation

A. Preliminary Court Approval of Agreement.

Promptly after execution of this Agreement, but in no event later than 10 days after the execution of this Agreement, the parties by joint motion shall submit the Agreement to the District Court requesting that the Court enter an order granting preliminary approval of the Agreement. The District Court shall be requested to direct the giving of notice to the plaintiff class and to schedule a fairness hearing. In the event the Court declines preliminarily to approve the Agreement, or finds the Agreement does not provide an adequate basis for issuing notice and scheduling a fairness hearing, then the entire Agreement shall become null and void unless the parties promptly agree in writing to other mutually satisfactory settlement provisions and agree to proceed with the Agreement, subject to approval by the Court.

B. Final Judgment.

At the final hearing on fairness, adequacy, and reasonableness of the settlement as set forth in this Agreement, the parties, and each of them, agree to cooperate in good faith to achieve the expeditious approval of the settlement, and shall request the Court to grant final approval of the Agreement and to enter judgment thereon ("Judgment"). In order to satisfy the requirements of the Agreement, the Judgment must include, by specific statement or by reference to the Agreement to the extent permitted by law and the rules of court, provisions which:

1. Affirm certification of the proceeding as a class action pursuant to Rule 23, Fed. R. Civ. P., with the plaintiff class as previously defined by the Court;
2. Find that the notice given to class members satisfied the requirements of both Rule 23, Fed. R. Civ. P., and due process, and that the Court has jurisdiction over the class;
3. Find that the Agreement is fair, adequate, and

reasonable in all respects;

4. Order that defendant University shall implement the Settlement Agreement;

5. Pursuant to Rule 42(b), Fed. R. Civ. P., sever from this action the claims that are pending resolution of the Knight-Sims plaintiffs' appeal from this Court's orders of October 5, 2004, and February 10, 2005, denying plaintiffs' requests for relief based on said claims;

6. Subject only to final resolution of the claims pending on appeal or severed, find that on judicial approval of this Agreement, including the commitments contained herein, defendant University shall be in full compliance with the law, and that, therefore, there are no continuing policies or practices of defendant University, or remnants, traceable to *de jure* segregation, with present discriminatory effects which can be eliminated, altered or replaced with educationally sound, feasible and practical alternatives or remedial measures;

7. Subject only to final resolution of the claims pending on appeal or severed, dismiss on the merits and with prejudice (i) all claims against defendant University set forth in the complaint, as amended, (ii) all claims against defendant University set forth in the complaint-in-intervention, and (iii) all claims against defendant University of racial discrimination asserted before the Court throughout the pendency and trials of the action, including, without limitation, claims of system or institutional aspects, features, policies and practices alleged to be remnants of the *de jure* system.

C. Finality and Term of Agreement.

This Agreement shall become final upon the occurrence of the following events: (i) approval of the Agreement in all respects by the District Court as required by Rule 23(e), Fed. R. Civ. P., and (ii) entry of the Judgment as provided for above.

The term of the provisions of this agreement shall be for five years from the date it is finally approved by the Court or for four

years from the date the University begins implementing its Strategic Diversity Plan, whichever term is longer. The Agreement shall be binding upon the successors of any University official (in his or her official or representative capacity) for the term hereof, and upon any person or party claiming by, under, or on behalf of named plaintiffs or any member of the plaintiff class.

D. Enforcement

1. The parties to this Agreement, including all class members, agree that litigation regarding enforcement of this Agreement is counterproductive. If there is a claim that defendant University has not complied with the terms of this Agreement, then the parties agree that resolution of any such allegation should first and foremost be achieved by informal discussions and negotiations between counsel for the Knight-Sims Plaintiffs and counsel for the defendant University. Counsel for Knight-Sims Plaintiffs, acting on behalf of the class members, shall notify counsel for defendant University of the specific provision(s) of this

Agreement that the University has allegedly not complied with. Upon receipt of that notice, counsel for defendant University agrees to work with his client within a reasonable time period to respond to that allegation, and if it concedes non-compliance, to make reasonable efforts to cure any alleged breach. Counsel for both parties agree to use good faith efforts to resolve legitimate disputes regarding differences of interpretation of the settlement agreement.

2. In the event that the parties are unable to resolve any matter as set out above, they agree to select a mediator acceptable to all the parties to reach a resolution of the issue. Each party will pay for its own fees and expenses associated with any dispute regarding compliance with the terms of this agreement. If the parties are unable to resolve the matter by mediation as set out above then such matter shall be resolved by binding arbitration administered by the American Arbitration Association (the "AAA") in accordance with the Arbitration Rules

of the AAA and, to the maximum extent applicable, the Federal Arbitration Act (Title 9 of the United States Code).

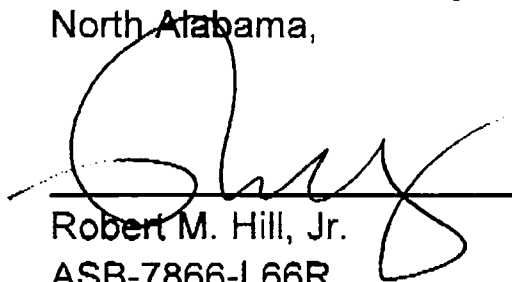
This 10th day of October, 2006.

For the Knight-Sims Plaintiffs
And plaintiff class,



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